(b)(6)

U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-T-S-

DATE: OCT. 19, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an IT consulting, training, and development business, seeks to permanently employ the Beneficiary as a systems analyst under the immigrant classification of advanced degree professional. *See* Immigration and Nationality Act (the Act) § 203(b)(2), 8 U.S.C. § 1153(b)(2). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director's decision denying the petition concludes that the Beneficiary did not possess the minimum experience required to perform the offered position by the priority date.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal. We many deny a petition that does not comply with the technical requirements of the law even if the Director does not identify all of the grounds for denial in the initial decision. *See Spencer Enters., Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

I. PROCEDURAL HISTORY

The Form I-140 was filed by [redacted] with a federal employment identification number (EIN) of [redacted] According to public records and the tax records submitted by the Petitioner, the Petitioner's legal business name is [redacted] and [redacted] is its assumed name. Further, according to public records, the Petitioner was organized as a limited liability company in the State of New Jersey in [redacted]

As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL). *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); *see also* 8 C.F.R. § 204.5(a)(2). The priority date of the petition is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d). The priority date in this case is March 21, 2013.

Part H of the labor certification states that the offered position has the following minimum requirements:

H.4. Education: Bachelor's degree.
H.4-B Major Field of Study: Computer science or related.
H.5. Training: None required.
H.6. Experience in the job offered required: Yes.
H.6-A If yes, number of months experience required: 60.
H.7. Alternate field of study: Accepted.
H.7-A If Yes, specify the major field of study: Information Technology, Engineering or related.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: None accepted.
H.14. Specific skills or other requirements: Must be willing to travel & relocate.

Part J of the labor certification states that the Beneficiary possesses a bachelor's degree in computer science and information technology from University, College, in India, completed in 2007. The record contains a copy of the Beneficiary's Bachelor of Technology degree and transcripts from University issued in 2007.

The record also contains an evaluation of the Beneficiary's educational credentials prepared by for on January 22, 2008. The evaluation concludes that the Beneficiary "has attained the equivalent of a Bachelor of Science degree in Computer Science, from an accredited institution of higher education in the United States."

The record also contains an evaluation of the Beneficiary's credentials dated December 13, 2013, from for The evaluation states that the Beneficiary "has attained the equivalent of a Bachelor of Science degree in Computer Science from an accredited institution of higher education in the United States."

Further, the record contains an evaluation of the Beneficiary's credentials prepared by for University on February 21, 2014. states that the Beneficiary's Bachelor of Technology degree "is equivalent to 120 credits of academic studies toward a Bachelor of Science Degree (BS) in Computer Science from an accredited college or University in the United States of America."

Part K of the labor certification states that the Beneficiary has the following work experience:

- Employment as a computer programmer with in India, from June 4, 2007, through November 28, 2008;
- Employment as a computer programmer with in New Jersey, from December 4, 2008, through August 31, 2012; and

- Employment as a systems analyst with [redacted] in [redacted] New Jersey since September 1, 2012.

The Beneficiary's IRS Forms W-2, Wage and Tax Statements, show the following employer information:

Year	Employer	EIN
2009	[redacted]	[redacted]
2010		
2011	[redacted]	[redacted]
2012		
2013		

The Beneficiary's Forms I-797A, Notice of Action, submitted by the Petitioner show the following H-1B nonimmigrant petition approvals for the Beneficiary:

Petitioner	Validity Dates
[redacted]	12/04/2008-10/22/2011
	10/23/2011-10/22/2014
	08/28/2012-10/22/2014

USCIS records show three additional H-1B nonimmigrant approvals for the Beneficiary:

Petitioner	Validity Dates
[redacted]	10/01/2008-09/06/2011
	07/10/2014-01/15/2016
	08/03/2015-08/02/2016

The record contains a December 18, 2008, letter from [redacted] HR Manager of [redacted] indicating that the Beneficiary worked full-time for [redacted]

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[1] Pursuant to the Petitioner's audited financial statements in the record, the Petitioner was formed in [redacted] as a wholly-owned subsidiary of [redacted] The audited financial statements indicate that on [redacted] the Petitioner "entered into an Asset Purchase Agreement ('APA') with [redacted] and [redacted] wherein the assets of [redacted] were taken over effective [redacted] and the Petitioner are two separate entities. According to tax documents in the record, the EIN for [redacted] is [redacted] It is not clear if [redacted] continued to operate after [redacted]

[2] USCIS records show the EIN of the Petitioner in that case is [redacted]

[3] USCIS records show the EIN of the Petitioner in that case is [redacted]

[4] *Id.*

[5] USCIS records show the EIN of the Petitioner in that case is [redacted]

[6] USCIS records show the EIN of the Petitioner in that case is [redacted]

[7] Id.

from June 4, 2007, to November 28, 2008, as a computer systems analyst.

The record also contains a January 7, 2014, letter from Vice President, on letterhead stating that the Beneficiary "has been working as a full-time employee with as a computer programmer from December 4, 2008, through August 31, 2012, and "that [the Beneficiary] was promoted to Systems Analyst from September 1, 2012."

The record contains a second January 7, 2014, letter from Vice President, on letterhead stating that the Beneficiary worked as a computer programmer at from June 4, 2007 to November 28, 2008;[8] that he worked as a computer programmer at from December 4, 2008 to August 31, 2012; and that he worked as a systems analyst at from September 1, 2012 to the date of the letter.

Further, the record contains a third letter dated February 20, 2014, from on letterhead stating that the Beneficiary was "hired in the role of Computer Programmer on June 4, 2007 through August 31, 2012, for a total of 5 years, 2 months, and 27 days. As of September 1, 2012, [the Beneficiary] was promoted to the role of Systems Analyst." states that there is a "considerable overlap" between the positions of computer programmer and systems analyst, and that a certain percentage of skills growth from computer programmer to systems analyst is required in each job responsibility category. concludes that the duties performed by the Beneficiary as a computer programmer from June 2007 to August 2012 qualify him for the proffered position of systems analyst.

The record contains a fourth letter dated May 9, 2014, from Vice President, on letterhead stating that the Beneficiary worked as a computer programmer at from June 4, 2007 to November 28, 2008; that he worked as a computer programmer at from December 4, 2008 to August 31, 2012; and that he worked as a systems analyst at from September 1, 2012 to the date of the letter.

The record also contains the Beneficiary's resume, which states that the Beneficiary worked as a computer programmer at in India from June 4, 2007 to November 28, 2008; that he worked as a computer programmer at in

[8] We note that the Petitioner has not established that has the authority to verify the Beneficiary's employment in India. While he is listed on the labor certification as the Beneficiary's supervisor while he was employed by the Petitioner and he was not the Beneficiary's supervisor at in India. Further, there is no indication in the record that had any affiliation with

NJ from December 4, 2008 to August 31, 2012; and that he worked as a systems analyst at [redacted] in [redacted] NJ from September 1, 2012 to the date of the resume.

II. LAW AND ANALYSIS

A. The Roles of the DOL and USCIS in the Immigrant Visa Process

At the outset, it is important to discuss the respective roles of the DOL and U.S. Citizenship and Immigration Services (USCIS) in the employment-based immigrant visa process. As noted above, the labor certification in this matter is certified by the DOL. The DOL's role in this process is set forth at section 212(a)(5)(A)(i) of the Act, which provides:

> Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-
>
> > (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
> >
> > (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is significant that none of the above inquiries assigned to the DOL, or the regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the alien are qualified for a specific immigrant classification. This fact has not gone unnoticed by federal circuit courts:

> There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).[9] Id. at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.
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> . . .

[9] Based on revisions to the Act, the current citation is section 212(a)(5)(A).

> Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on *Madany*, 696 F.2d at 1008, the Ninth Circuit stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the DOL that stated the following:

> The labor certification made by the Secretary of Labor . . . pursuant to section 212(a)(14) of the [Act] is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating:

> The Department of Labor (DOL) must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).

> The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984).

Therefore, it is the DOL's responsibility to determine whether there are qualified U.S. workers available to perform the offered position, and whether the employment of the Beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine if the Beneficiary qualifies for the offered position, and whether the offered position and the Beneficiary are eligible for the requested employment-based immigrant visa classification.

At issue in this case is whether the Beneficiary qualifies for the offered position.

B. The Minimum Requirements of the Offered Position

The Petitioner must establish that the Beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

In evaluating the labor certification to determine the required qualifications for the position, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Mass., Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

The labor certification requires a Bachelor's degree in Computer Science, Information Technology, Engineering, or related field. The Beneficiary received a Bachelor of Technology degree from [redacted] University in 2007. We have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is a "non-profit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in more than 40 countries." *See* http://www.aacrao.org/About-AACRAO.aspx (last visited Oct. 6, 2015). Its mission is "to provide professional development, guidelines, and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology, and student services. *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." *See* http://edge.aacrao.org/info.php (last visited Oct. 6, 2015). USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.

EDGE states that the Beneficiary's Bachelor of Technology (BTech) degree represents "attainment of a level of education comparable to a bachelor's degree in the United States." http://edge.aacrao.org/country/credential/bachelor-of-engineeringtechnology?cid=single (last visited Oct. 6, 2015). The evaluations submitted by the Petitioner agree with the conclusion of EDGE.

The Petitioner has established that the Beneficiary has the foreign equivalent degree required by the terms of the labor certification.

The labor certification states at Line 6 and 6-A that the position requires 60 months of experience in the offered position of systems analyst. The Petitioner indicated at Line H.10 of the labor certification that experience in an alternate occupation was not acceptable.

Evidence relating to qualifying experience must be in the form of a letter from a current or former employer and must include the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary. 8 C.F.R. § 204.5(g)(1). If such evidence is unavailable, USCIS may consider other documentation relating to the beneficiary's experience. *Id.*

As noted above, Part K of the labor certification states that the Beneficiary has the following work experience:

- Employment as a computer programmer with [redacted] in [redacted] India, from June 4, 2007, through November 28, 2008;
- Employment as a computer programmer with [redacted] in [redacted] New Jersey, from December 4, 2008, through August 31, 2012; and
- Employment as a systems analyst with [redacted] in [redacted] New Jersey since September 1, 2012.

The experience letters in the record indicate that the Beneficiary has over five years of experience as a computer programmer and that he has six months and three weeks of experience with the Petitioner as a systems analyst.

On January 24, 2014, and on November 17, 2014, the Director issued notices of intent to deny (NOIDs). In both NOIDs, the Director informed the Petitioner that the Beneficiary did not satisfy the minimum experience requirement stated on the labor certification. The Director specifically stated that the Beneficiary had only six months and three weeks of experience in the proffered position of systems analyst, and noted that the remainder of the Beneficiary's experience was as a computer programmer. In both NOIDs, the Director also requested that the Petitioner submit additional documentation of its continuing ability to pay the proffered wage.

In his decision, the Director stated that the labor certification required 60 months of experience in the job offered as a systems analyst and that, contrary to the Petitioner's assertions in response to the NOID, the Beneficiary's experience as a computer programmer did not constitute qualifying employment as a systems analyst.

On appeal, the Petitioner states that the Beneficiary's progressive experience as a computer programmer should be considered as evidence that the Beneficiary is qualified for the offered job. The Petitioner further states that the DOL "provided the same code of Software Developers

Applications based on the duties of systems analyst as well." Although the Petitioner listed the job title as systems analyst on the labor certification, the DOL assigned the occupational code of 15-1132 and job title "Software Developers, Applications" to the proffered position based on the job duties.

The DOL's occupational codes are assigned based on normalized occupational standards. The occupational classification of the offered position is determined by the DOL (or applicable State Workforce Agency) during the labor certification process, and the applicable occupational classification code is noted on the labor certification form. O*NET is the current occupational classification system used by the DOL and is located online at http://online.onetcenter.org. O*NET incorporates the Standard Occupational Classification (SOC) system, which is designed to cover all occupations in the United States. *See* http://www.bls.gov/soc/socguide.htm (last visited Oct. 6, 2015). The position of computer systems analyst has an SOC Code of 15-1121, and the position of computer programmer has an SOC Code of 15-1131. *Id.* Even if we accept that experience as a software developer, applications, *or* as a systems analyst would qualify the Beneficiary for the proffered position based on the assigned SOC Code, the Petitioner has not established that the Beneficiary has 60 months of experience in the positions of software developer, applications, *or* systems analyst. The Beneficiary's experience in the alternate occupation of computer programmer does not qualify him for the proffered position pursuant to the terms of the labor certification, which states at Line H.10 that experience in an alternate occupation is not accepted.

In response to the Director's second NOID, the Petitioner additionally stated that it was its intent to accept experience as a computer programmer and that it "did not deny anyone due to the reason that he or she had worked on the duties of computer programmer." However, the Petitioner did not indicate on the labor certification that progressive experience as a computer programmer would qualify a potential applicant for the proffered position. Further, the record does not contain any evidence showing that the Petitioner actually used these requirements in its labor market test.

The terms of the labor certification supporting the instant petition do not permit consideration of experience in an alternate occupation, and the Beneficiary's experience as a computer programmer was in a position other than the offered position. Therefore, that experience may not be used to qualify the Beneficiary for the proffered position.

The Petitioner employed the Beneficiary for six months and three weeks prior to the priority date in the proffered position of systems analyst. We note that this employment would not count as qualifying experience in the proffered position. Representations made on the certified ETA Form 9089, which is signed by both the Petitioner and the Beneficiary under penalty of perjury, clearly indicate that the Beneficiary's experience with the Petitioner or experience in an alternate occupation cannot be used to qualify the Beneficiary for the certified position.[10] Specifically, the Petitioner

[10] 20 C.F.R. § 656.17 states:

indicates that questions J.19 and J.20, which ask about experience in an alternate occupation, are not applicable. In response to question J.21, which asks, "Did the alien gain any of the qualifying experience with the employer in a position substantially comparable to the job opportunity

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(h) *Job duties and requirements.* (1) The job opportunity's requirements, unless adequately documented as arising from business necessity, must be those normally required for the occupation

. . . . .

(4)(i) Alternative experience requirements must be substantially equivalent to the primary requirements of the job opportunity for which certification is sought; and

(ii) If the alien beneficiary already is employed by the employer, and the alien does not meet the primary job requirements and only potentially qualifies for the job by virtue of the employer's alternative requirements, certification will be denied unless the application states that any suitable combination of education, training, or experience is acceptable.

(i) *Actual minimum requirements.* DOL will evaluate the employer's actual minimum requirements in accordance with this paragraph (i).

(1) The job requirements, as described, must represent the employer's actual minimum requirements for the job opportunity.

(2) The employer must not have hired workers with less training or experience for jobs substantially comparable to that involved in the job opportunity.

(3) If the alien beneficiary already is employed by the employer, in considering whether the job requirements represent the employer's actual minimums, DOL will review the training and experience possessed by the alien beneficiary at the time of hiring by the employer, including as a contract employee. The employer can not require domestic worker applicants to possess training and/or experience beyond what the alien possessed at the time of hire unless:

(i) The alien gained the experience while working for the employer, including as a contract employee, in a position not substantially comparable to the position for which certification is being sought, or
(ii) The employer can demonstrate that it is no longer feasible to train a worker to qualify for the position.

(4) In evaluating whether the alien beneficiary satisfies the employer's actual minimum requirements, DOL will not consider any education or training obtained by the alien beneficiary at the employer's expense unless the employer offers similar training to domestic worker applicants.

(5) For purposes of this paragraph (i):

(i) The term ''employer'' means an entity with the same Federal Employer Identification Number (FEIN), provided it meets the definition of an employer at § 656.3.
(ii) A ''substantially comparable'' job or position means a job or position requiring performance of the same job duties more than 50 percent of the time. This requirement can be documented by furnishing position descriptions, the percentage of time spent on the various duties, organization charts, and payroll records.

requested?," the Petitioner answered "no." The Petitioner specifically indicated in response to question H.6 that 60 months of experience in the job offered is required and, in response to question H.10, that experience in an alternate occupation is not acceptable. In general, if the answer to question J.21 is no, then experience with the Petitioner may be used by the Beneficiary to qualify for the proffered position if the position was not substantially comparable and the terms of the ETA Form 9089 at H.10 provide that applicants can qualify through an alternate occupation. Here, the Petitioner stated that applicants cannot qualify through experience in an alternate occupation.

As detailed above, the Beneficiary claimed to have worked for in India as a computer programmer from June 4, 2007, through November 28, 2008; as a computer programmer with NJ from December 4, 2008, through August 31, 2012; and, as a systems analyst with in NJ since September 1, 2012. The portion of the Beneficiary's employment with the Petitioner is from the date it began operations (presumably on December 1, 2010 when it took over the assets of onward.

The Petitioner indicated at Line J.21 of the labor certification that none of the Beneficiary's past employment for the Petitioner was "substantially comparable" to the offered job. A letter from the Petitioner dated February 20, 2014, stated that there "is a considerable amount of overlap between [the positions of computer programmer and systems analyst]," but conceded that the position of systems analyst was a promotion to an "elevated position." The Petitioner did not explain its indication in response to question J.21 of the labor certification that none of the Beneficiary's past employment for the Petitioner was "substantially comparable" to the offered job.

Further, in response to the Director's second NOID, the Petitioner stated that the "proffered position duties are however more than 50% different than the position that the beneficiary gained his on the job experience." However, in the evaluation of the Beneficiary's credentials prepared by for University on February 21, 2014, states that although "the title of the initial position performed by [the Beneficiary] has been that of a computer programmer, the duties of the position are very much related to the [proffered position]." It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* The Petitioner has not resolved the inconsistencies regarding the nature of the Beneficiary's employment with the Petitioner.

We note that the Petitioner indicated on the labor certification that the Beneficiary lived in FL at the time the labor certification was filed in 2013. The Beneficiary's IRS Forms W-2, Wage and Tax Statements, indicate that he lived in FL in 2009, 2010, and 2011, and in FL in 2012 and 2013. His paystubs issued by the Petitioner in 2014 indicate that he changed his address from FL to TX in May 2014.

We further note that the Petitioner's audited financial statements indicate that it has only one operating lease. That lease is for office space in [redacted] CA. The financial statements indicate that the Petitioner had no property or equipment as of December 2011, 2012, and 2013, and the statements do not reflect ownership of any real property. However, the labor certification and Beneficiary's resume indicate that the Beneficiary worked at [redacted] in [redacted] NJ from December 4, 2008, onward. It is not clear how the Beneficiary lived in Florida but worked in New Jersey, as claimed on the labor certification and the Beneficiary's resume. There is no indication that the Beneficiary telecommuted, or that he worked at client sites outside of New Jersey during that time. It is also not clear how the Petitioner is operating at its purported location in [redacted] NJ without a lease. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Ho*, 19 I&N Dec. at 591-92. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.*

The Petitioner did not establish that the Beneficiary possessed the minimum requirements of the offered position set forth on the labor certification by the priority date. Accordingly, the petition must be denied for this reason.

C. The Petitioner's Ability to Pay the Proffered Wage

Beyond the decision of the Director, in any further filings the Petitioner should submit additional evidence to establish its continuing ability to pay the proffered wage as of the priority date. *See* 8 C.F.R. § 204.5(g)(2).

According to USCIS records, the Petitioner has filed multiple Form I-140 petitions on behalf of other beneficiaries since the priority date of the current petition. Accordingly, the Petitioner must establish that it has had the continuing ability to pay the combined proffered wages to each beneficiary from the priority date of the instant petition. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg'l Comm'r 1977).

The Petitioner provided a list of twelve beneficiaries for whom it has filed Form I-140 petitions. However, the Petitioner's list does not acknowledge several additional Form I-140 petitions revealed in USCIS records. USCIS records reveal that the Petitioner has filed at least 29 Form I-140 petitions since 2011. Without further information on the petitions for the remaining beneficiaries, the Petitioner has not established its continuing ability to pay the proffered wages to the beneficiaries of all of its pending petitions. Accordingly, the petition must be denied for this additional reason.

III. CONCLUSION

In summary, the Petitioner did not establish that the Beneficiary met the minimum requirements of the offered position set forth on the labor certification as of the priority date. Further, the Petitioner did not establish its continuing ability to pay the proffered wages to the beneficiaries of all of its pending petitions.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of S-T-S-*, ID# 14114 (AAO Oct. 19, 2015)